United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

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P/S

SAMUEL H. SLOAN,

Plaintiff-Appellant,

-against-

CANADIAN JAVELIN Ltd. et al.,

Defendants-Appellees.

On Appeal From The United States District Court For The Southern District Of New York

APPELLANT'S REPLY BRIEF

SAMUEL H. SLOAN
Appellant pro se
Kleppsvegi 26
3. HAED T.H.
Reykjavik, Iceland

Dick Bailey Printers, Inc., Tel.: (212) 447-5358

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PRELIMINARY STATEMENT

In this appeal, although ninteen attorneys appeared in the court below, only two appellee's briefs have been filed. For the sake of convenience the first of these briefs submitted by counsel for Canadian Javelin Ltd. ("CJV") and serveral other defendants will be referred to herein as the "brief for CJV" and the second of these submitted over the names of nine attorneys representing either fifteen or seventeen defendants, depending on whether one relies on the inside or the outside of this brief, will be referred to as the "brief for Dow". On this latter point it should be observed that although fifteen defendants are listed on the cover of this brief on page 2 thereof an additional two defendants, pickands, Mather & Co. and Wood, Walker & Co., are listed. In addition, the cover of this brief lists "Miller Freeman

Publications, Inc. rather than for World Mining, a magazine which is now and always has been published by Miller-Freeman Publications, Inc. (A332-333)

This latter point was, of course, a fact in dispute in the court below but Silberfeld, Danziger & Bangster, counsel for the self-styled defendant Miller Freeman Publications Inc., has chosen not to press its argument on appeal. Similarly most of the other defendants have almost completely abandoned the arguments advanced in the district court. Naturally, this is to be expected since the defendants can expect prevail in this appeal only if they can demonstrate the correctness of Judge Bonsal's decision. For this reason the defendants no longer claim as they did in the court below that for example, the "final" amended complaint was a nullity and need not be answered or that the district court had no jurisdiction over several of the defendants such as CJV and other Canadian entities. Instead the defendants contend that they are being "harassed" with litigation, a contention which is clearly in approsite from the claim that Sloan's amended complaint was a nullity and need not be answered.

This reply brief will make no attempt to give a detailed analysis of the many things which are wrong with the two brief filed by the appellee's in this appeal. However, it must be said that at first inspection the brief for Dow seems quite convincing. Nevertheless after a more thorough review, a great many weaknesses and inconsistencies in the arguments presented in this brief become apparent

Indeed, it can readily be seen the brief for Dow as well as the brief for CJV is promesed upon on incorrect statement of the facts. For example, on page 20 of the brief for Dow it is said that "Sloan has not alleged that he was a purchaser or seller during the time in question". However, in paragraph 172 of the complaint (A-104) it is alleged that:

> "Plaintiff was at all times from January to August of 1973 a short seller of Javelin shares, Plaintiff made numerous purchases and sales of Javelin shares during this period".

Thus, the contention by Dow that Sloan does not meet the purchaser/seller requirement of the Birnbaum rule is not so obvious as the defendants would have this court believe. Nevertheless, pages 19-20 of the brief for Dow cites Birnbaum in an inprobable manner in which it has never been applied in the past. In effect, the defendants are seeking to use Birnbaum in convoluted way to form what amounts to a restatement of the now discredited "reliance test". This point becomes clear on page 15 of the brief for CJV which unlike the brief for Dow, acknowledges that the complaint alleges that the plaintiff was a purchaser and seller of CJV shares.

This brief will endeavour to concentrate on the numerous misstatements of fact which are to be found frequently and most prominetly in the brief for Dow. The entirely fallacious nature of the arguments presented by Dow are such that the appellant would not feel it necessary to put in this reply brief were it not for the fact that there seems to be a significant likelyhood that this court will

be misled by various mistatements. In addition, it now appears that the appellant will not be able to attend the oral argument of this appeal. Therefore, in spite of the fact that the arguments presented by the appellee´s are altogether inadequate it is appropriate to put in a reply brief here.

ARGUMENT

On page 11 of the brief for Dow it is implied that Sloan is improperly arguing this appeal by "raising factors.........outside of the record". However on pages 8-9 of this same brief, these appellees do precisely what they are accusing Sloan of doing. There, that brief states:

> "At the October 23. 1973 hearing on the motions to dismiss the first complaint, Sloan announced that he was preparing a third complaint which he believed would be sufficient, and Judge Bonsal indicated that the pending motions would be held in abeyance to permit Sloan to prepare an adequate pleading."

The fact is, however, that nothing of the kind took place on October 23, 1973. The colloquy described in this paragraph did not occur on October 23, 1973 but rather occured on November 19, 1973. The destination is critical. The fact is that on October 23, 1973 Judge Bonsal heard oral argument from attorneys Irving Golomb, Michael Murphy and Neal Baron representing the law firms of Diamond & Golomb, Lord, Day & Lord and Booth & Baron respectively as well as from Sloan himself. Marguerite B. Filson of Patterson, Belknap & Webb also was present and asked permission to submit motion papers and to argue orally but this request

was denied.

Of course, the litigants here would appear to be free to argue back and forth about what was said on this date and the significance, if any, of what was said. However, it cannot be disputed that no stenographic record was kept of the oral proceedings on October 23, 1973 nor, for that matter, is there any discussion of the proceedings on this date in Judge Bonsal's desicion. Indeed, the only reference in the record to the proceedings on October 23, 1973 is to be found in an assertion that on that date Sloan said that he had been unable to retain counsel capable of handling this litigation. (See A-259).

The misstatement in the brief for Dow concerning what took place on October 23, 1973, although perharps not deliberate, does much to smooth over the rough edges in the arguments advanced in the appellees briefs. The appellees contend, among other things, that the pro se plaintiff was "permitted enormous latitude" (Brief for CJV p. 13). Since there is nothing in the record to indicate that the plaintiff was accorded enormeous latitude or, for that matter, any latitude at all the appellees are often seen to advance arguments concerning events not proven to have occured and indeed which never took place.

Almost at it's outset, the brief for Dow, on page 2 thereof, describes the area in which it wishes to contest this appeal by stating:

"An essential question before this tribunal involves the degree of latitude and indulgence to be afforded a pro se litigant."

This statement bases its starting point on the

presumption that pro se litigants in general are inept and incompetant and need to be accorded at least a small degree of indulgence. However, the record of this case demonstrates that the plaintiff has not been accorded even the slightest degree of indulgence nor, for that matter, has any been requested. To the contrary, the appellant, presumably because of his pro se status, was not accorded in the court below even the simple courtesies which attorneys routinely grant to each other. For example, on page 14 of the brief for Dow the statement is made that "Sloan did not even bother to return to New York". On the date in question, January 14, 1974, Sloan was in Stockholm, Sweden and the court was so advised (A-126). If Sloan had been an attorney he almost certainly would have been granted an adjournment under these circumstances. It is true that Sloan's legal advisories were under no obligation to agree to the adjournment Sloan requested. On the other hand, there was no reason for Sloan to have returned from Stockholm in order to be present on January 14, 1974 because, in fact, no valid motions to dismiss could possibly have been pending on that date.

The appellee's try to brush aside this point by arguing that Sloan did not suffer prejudice even though admittedly "some written motions were filed late". (Brief for Dow p.15). Simple arithmetic reveals that this must have been the case. Sloan submitted his amended complaint on Saturday December 29, 1973. December 30, 1973 was a Sunday and December 31, 1973 and January 1, 1974 were not working days since these days were New Years Eve and New Years Day respectively. Thus, the first day on which any motions to

dismiss the complaint of December 29, 1973 could have been prepared, filed and served was January 2, 1974. However, the General Rules for the Southern District of New York require that ten days notice be given on any written motion and in addition Rule 6(e) F.R. Civ.P. requires that that time be extended by three days when service is by mail. Since all motions made by the appellees were served by mail in this case, the result of these rules is that there must be at least 13 days notice on any written notice of motion served by mail and filed in the Southern district of New York. The docket sheet in 73 Civil 4403 reveals that there were no docket entries between December 3, 1973 and January 2, 1974 (A-iv) and the docket sheet in 73 Civil 3801 show NO docket entries between November 14, 1973 and January 4, 1974, (A-xi). It can be seen that the only defendant who came close to filing a motion to dismiss on a timely basis was Press Man, Frohlich & Frost who filed a motion to dismiss on January 2, 1974. even this motion to dismiss gave Sloan only twelve days notice rather than the required thirteen. Incidently, Press Man, Frohlich & Frost has not appeared in this appeal. Two other motions to dismiss were filed on January 4, 1974 and two stragglers filed motions to dismiss on January 8,1974 and January 11, 1974. All of these motions were made returnable on January 14, 1974 even though in no instance was Sloan given the thirteen days notice which is required by the rules of court.

One can only imagine the uproar which would have occured had Sloan acted in this manner and filed motions which failed to give adequate notice. However, Sloan in this lawsuit fastididiously obeyed the rules of court. to the contrary

the defendants after having shown blatant disregard for the most fundamental rules of motion pratice, now have the gall to come into court and argue that they are being "harassed" with litigation. The fault is, however, that it is the plaintiff and not the defendants who are being harassed. After filing motion papers which failed to give Sloan adequate notice, the defendants argue that Sloan should be punished because he "did not even bother" to return from Stockholm, Sweden to New York. According to this argument, Sloan should have proceeded to the airport in Stockholm, Sweden and caught the next airplane to New York upon being told that motions to dismiss had been filed in spite of the fact that these motions were defective and invalid on their face because insufficient notice was given.

Both briefs for the appellee's filed in this appeal contend that the defendants have been harassed (Brief for CJV. 13, Brief for Dow p.15) but no statement can be found of what this harassment consists of specifically. The defendants imply that harassment occured because three complaints were filed. However, only one defendant actually answered more than one complaint and that answer was apparently filed in error (See A-35). As a matter of fact, only six of the defendants who appeared in this action were ever served with either the first or the second complaint (See A-xi). The so-called third complaint was served only in the sense that it was mailed to the relatively samll number of defendants who had then appeared in this action. This third complaint is before the court because the defendants insisted on having it included in the Supplemental appendix.

Even though it was never filed and therefore is not part of the record. Although the appellant does not object to its inclusion in the Supplemental Appendix, this document was never filed and certainly no "harassment" occured merely because several defendants received this document in the mail.

The second complaint was not served on any defendant, It appeares, however, that several stock brokerage defendants got wind of this lawsuit and decided to appear for reasons of their own although not legally bound to do so. One such defendant was Bache & Co who appeared and asserted a counterclaim for the amount of $31,000. The brokerage defendants who came into this case voluntarily can hardly claim to have been harassed. Thus, for most defendants, the first and only service of process was of the fourth complaint (See A-v to A-vi). It is hard to see how any defendant can contend that it was "harassed" by a complaint which was never served and which probably few defendants saw prior to this appeal.

There are numerous other flaws in the argument that the defantants were "harassed" in some unspecified manner by the four complaints, not the least of which is that the complaints were prepared primarely in response to a contention that the allegations of the earlier complaints did not allege facts with sufficient particularity. It is fair to say that as more facts are alleged in a complaint the burden upon the defense becomes progressively lighter. Therefore, the fourth complaint is far easier to defend against than the first complaint and consequently no prejudice has resulted to the

defendants by the filing of this subsequent complaint. However, this point need not be pursued further because it has long been established in the American system of jurisprudence that no prejudice results in the filing of a complaint. Long ago in Detroit v Detroit City Rg.Co 55 Fed. 569, 572 (1893), William Howard Taft, who was then Circuit Justice said:

> "It is very clear from an examination of the authorities, English and American, that the right of a complaintant to dismiss his bill without prejudice, on payment of costs, was of course except in certain cases .... The exception was where a dismissal of the bill would prejudice the defendants in some other way than by the mere prospect of being harassed and vexed by future litigation of some kind (citations omitted.)"

This principle was subsequently adopted by the United States Supreme Court in Pullman's Place Car Co. v. Transportation Co. 171 U.S. 138, 145-146 (1898) and was discussed at length in Ex Parte Skinner & Eddy Corp. 265 U.S. 86 (1924) and in Jones v S.E.C. 298 U.S. 1, 19-22 (1936). These cases demonstrate that Sloan was free to have his complaint dismissed at any time prior to Judge Bonsals decision of May 30, 1974 without prejudice and that Sloan would then have been free to start a new lawsuit by filing a new complaint identical to his so-called fourth complaint. Had Sloan done so none of the defendants would have had a legal basis to object. Indeed, Sloan suggested that he be permitted to do precisely this in a four page letter which can be found in the record of this appeal and which was delivered to Judge Bonsal just prior to the decision of May 30, 1974. No defendant can seriously contend that it would have been

subjected to less prejudice had Sloan withdrawn his earlier complaints and started a new lawsuit. Once the significance of this point is realized, any claim that the defendants have been subjected to a legally cognizable form of prejudice in the course of the proceedings below must vanish.

Both appellees skoff at Sloan's claim, expressed on page 31 of his appellant's brief, that the right to litigate is essential to a free government. For example, on page 15 of the brief for Dow this argument is characterized as a claim that there exists a "constitutional obligation of defending frivolous lawsuits." However, the point Sloan is making was recognized in Blue Chip Stamps v Manor Drug Stores where the Supreme Court, citing Petroleum Exploration, Inc. v Public Service Corp. 304 U.S. 209, 222 stated:

"........... the expense and annogance of litigation is part of the social burden of living under government."

This citation demonstrates that Judge Bonsal's presumption that this lawsuit should be dismissed because of the expense of defendants have borne (SA 15-16) in patently erroneous.

It should be obvious by now that Judge Bonsal incorporated in his decision a vastly distorted statement of the facts. For example, the opinion below states that.

"Each of the 48 defendants in this action has been required to engage in costly and time-consuming motion practice in responding to plaintiff's complaints as well as his numerous and frivolous motions and other court filings."

However, the record clearly demonstrates that many of the 48 defendants did not even appear and few responded to more than one complaint. In addition, neither of the

appellee's briefs cites even a single example of a "frivolous motion or other court" filing. Indeed, an examination of the record demonstrates that there were no frivolous court filings and that Sloan complied fully with the rules of procedure. To the contrary it was the defendants who did not serve motions on time, did not serve motions on each other and otherwise violated the federal rules of procedure in a manner which created what can only be characterized as "planned confusion", cf. Taylor v Hayes 418 U.S. 488 (1974).

Not only was there planned confusion in the court below because of tractical measures adopted by the defendants, but this pattern is continued by some unusual features of this appeal. One of the problems created by this appeal concerns the fact that the cover of the brief for Dow lists the names of nine attorneys, none of whom appear to be taking principle responsibility for this brief. This is most unusual. It is customary for judicial decisions to note appearances of counsel but Judge Bonsal, in his decision states: "Appearances omitted" (SA-1). One wonders if this court, when deciding this appeal, will do the same thing. It would seem inappropriate to list nine attorneys seperately, thereby possibly creating the impression that nine briefs had been filed, particulary when it is sufficiently obvious that not all nine attorneys actually played a role in the drafting of this brief. Of course, the real question is not how this court will write up its decision once it has been made but rather whether this brief is properly filed in the first instance.

It has already been shown that this brief contains numerous factual misrepresentations. The instant brief has already focused on a few instances of this but there are many more that the appellant believes are so obvious as to not require a detailed discussion. However, to cite two examples, it can be seen that on page 20 of this brief the statement is made that:

"Sloan has continually failed to give information and documentation which establishes that he was a purchaser or seller under the Birnbaum/Blue Chip rule."

However, the appellants failed to cite anything in the record which establishes the correctness of this assertion. To the contrary, it is obvious that Sloan is and always has been more than willing to provide the defendants with all of the information they want. With respect to his claims against just one of the defendants, Sloan provided concelled checks, trade confirmations, buy in notices and many other documents which establish beyond doubt that purchase and sale transactions did take place (See A-315 to A-329). Sloan also stated that he sold short 33, 400 shares of CJV (A-188), that there were more than 100 transactions involved (A194), and that the brokers named as defendants could themselves supply this information (A194) if indeed any information was desired. The complaint alleges numerous specific instances of transactions in CJV and none of the defendants have ever disputed the truth or the accuracy of any of the allegations of the complaint although given ample opportunity to do so. It is obvious that the defendants would like to burden the plaintiff with a mass of paper work before even being required to file an answer to a complaint. Worse yet,

it is clear that the appellees are attempting to mislead this court and thereby gain affirmance of the district courts decision by falsely claiming that Sloan has refused to provide documentation when, in fact, no such documentation has ever been requested.

A second example of this disturbing tendancy to misrepresent the facts comes four sentences later when the brief for Dow states:

> "Essentially, Sloan had already borrowed stock from an owner and presumably had sold it, but did not buy or sell in connection with the alleged fraud."

The sentence assumes as a matter of evidentiary fact that sales took place, that borrowings of stock took place and that a fraud occured all in that time sequence. Moreover, here and elsewhere in the brief for Dow the appellees imply that the record establishes not only that Sloan sold short but the reason for which Sloan sold. Both appellees briefs argue that Sloan sold short in the hope that the price of CJV would go down and that Sloan would realize a profit as a result (Brief for Dow p.21, Brief for CJV p.19). There can be no doubt, of course, that this is true. However, the appellees then go further and argue that the record establishes that Sloan believed the price of CJV stock would go down because he knew that CJV was committing a fraud. The appellees are apparently not discouraged by the fact that in order to establish the correctness of this claim they must be able to prove what thoughts were going through Sloan's mind nearly three years ago when he decided to sell short the shares of CJV. Indeed, the appellees contend that Sloans thought process can be established as a

matter of evidentiary fact from the record of this appeal.

Although there are many serious flaws in this argument they need not be pursued at length. It has long been established that motivation is not a subject for judicial inquiry. Cf. Jackson v Statler Foundation 496 F.2d 623, 629 n.8 (2d. Cir. 1974). For example, at a trial on the merits, the court would sustain an objection if counsel for any of the defendants were ever to ask Sloan to explain why he sold short. Any contrary result would bring about a drastic charge in federal securities law. Defendants would routinely allege in securities fraud cases that the plaintiff knew of or suspected the alleged fraud. It would become effectively impossible to maintain a class action in a securities fraud case because every plaintiff would be subjected to questioning concerning what he knew and when he knew it. In sum, the remedial purpose for which the anti-fraud securities laws were intended would be defeated. Moreover, the courts would be launched into matters of pure speculation as to why a a particular plaintiff did what he did.

When all of the nonsense is cut aside, the claims of the appellees boil down to nothing more than an assertion that the complaint was properly dismissed under Rule 41(b) F.R. Civ. P. because Sloan failed to comply with both a rule and an order of the court. However impressively the defendants present this argument it can be seen to have no substance once the complaint and the record itself are actually examined. To begin with, ever since Erie R.R. v Tompkins 304 U.S. 64 (1938) it has been Hornbook law that the federal courts are required to follow state procedural

rules where they will "substantially affect" the outcome of a suit. This principle applies to state law issues which arise in non-diversi[illegible] cases as well as to issues in diversity cases. [illegible] Moore 0.305(3). However, the CPLR specifially [illegible]vides that no action shall be dismissed because of a mistake in procedure or a defect in the form of the pleadings. As a result, it is easy to maintain a suit in New York State and the dismissal which has occured here could not possibly occur in the New York state courts. On this point alone, Judge Bonsal must be reversed.

Furthermore, Sloan did not fail to comply with either an order or a rule of court. Judge Bonsal did not "order" Sloan to file an amended complaint. He merely "gave" Sloan the opportunity to do so. The defendants do not disagree. (See Brief for Dow p.5). To be sure there was no stenographic record made of the proceeding on that date and this appellate court has nothing to go on other than Judge Bonsal's recollection of what occured on that date, (See SA-9). Actually, Judge Bonsal contradicts himself, first stating that he "granted leave" (SA-9) then that he "ordered" (SA-13) and finally that he "directed" (SA-18) Sloan to file an amended complaint. If a stenographic record had been kept of what Judge Bonsal actually said this problem would be cleared up. However, regardless of what Judge Bonsal said it cannot be disputed that there is no provision in the F.R. Cir. P. which gives a district judge the power to order suo sponte that an amended complaint be filed. Thus Judge Bonsal could not have made any order and indeed there was no such order.

This leaves only the claim that Sloan failed to comply with Rule 9(b) F.R. Cir. P. However, this claim merits

only one sentence in Judge Bonsal's decision (SA-17) and is hardly deserving of more attention here. Rule 9(b) provides that the circumstances constituting fraud shall be stated with particularity. The complaint of December 29, 1973 does precisely that. The appellee's briefs filed in connection with this appeal attempt to attract attention away from what the complaint says by advancing arguments

concerning what the complaint does not say. In fact, both briefs studiously avoid any description or discussion of what the complaint actually says. Instead, they contend for example that the complaint does not allege reliance (Brief for Dow p. 20-21, Brief for CJV p.15-16). However, reliance is not a "circumstance constituting fraud" and therefore need not be "stated with particularity". Reliance, causation in fact and a "comprehensive scheme to defraud" are legal theries which need not be alleged in a complaint. The purpose of Rule 9(b) is to inform the defendants of what they are accused of doing specifically, see Segal v Gordon 467 F.2d 602, 607 (2d Cir. 1972), and the complaint goes to considerable lengths to do precisely that. None of the defendants have yet complained that they have not been informed of what they are accused of doing. If, for example, the complaint contained a series of self serving allegations that the plaintiff relied or did not rely on the numerous misrepresentations or omissions which from the basis of this suit, these allegations would be legally unanswerable and would merely clutter up the complaint with statements which would do nothing to inform the defendants of what they are accused of doing.

At this point it is approcate to state that noone can seriously doubt that a fraud has occured. There is presently pending before Judge Lasker in the Southern District of New York a class action suit entitled Bonime v Canadian Javelin Ltd. Defendants CJV, Doyle and Wismer have agreed to settle by the payment of $1,350,000 to the members of the class including $260,000 in attorneys fees to the law firm of Wolf, Popper, Ross, Wolf & Jones. The allegations of the complaint in that action are substantially the same as the allegations of the complaint now on appeal. Needless to say, if that suit were not meritorious the defendants would not be willing to pay $1,350,000 by way of settlement nor would they have been willing to bear the cost, as they already have, of mailing notice to all class members including Sloan. Nevertheless Judge Lasker has not yet decided whether to approve even this substantial settlement.

A few words should be said about the argument concerning Edwards & Hanly found on pages 26-28 in the brief for Dow. The claim that "Edwards & Hanly sued Sloan for simple breach of contract" is, to put it bluntly, untrue. At trial Edwards & Hanly called three witnesses who testified as experts on the rules of the S.E.C., the American Stock Exchange and the NASD. Most of the trial transcript was concerned with this type of testimony, the fundamental facts not being in dispute. In spite of the clear evidence that Sloan breched no contract with Edwards & Hanly and indeed that it was Edwards & Hanly that breached its contract and converted securities belonging to Sloan, Edwards & Hanly was able to confuse the issues by arguing that Sloan violated

federal securities law and various rules and regulations and consequently Edwards & Hanly prevailed in the appellate Division. That decision, found at A-368-369, has been reported as Edwards & Hanly v Sloan 48 A.D. 2d 644 (1975). Interestingly, the account agreement, which forms the basis for the decision of the First Deportment, was not even offered into evidence at trial.

If the Judges of this court have any doubt that this is the case they need merely examine the record of that appeal. The brief of Edwards & Hanly argued at length that Sloan violated federal securities law. Sloan argued with equal vigour that this was not the case. Unfortunately it seems unlikely that the judges of this court are actually going to walk over to 60 Center St. and examine the record on file in the State Supreme Court there. However, the record and briefs of that appeal should by now be available in law libraries.

It should also be noted that the claim by Edwards & Hanly the state courts may rule upon questions of federal securities law has been rejected by the New York State courts. The First Department has stated that:

"Where asserted defenses and counterclaims involve alleged violations of the Securities Exchange Act, such defenses and counterclaims are not cognizable in state action since the statute specifically provides for exclusive jurisdiction in such matters." New York Stock Exchange v Goodbody 42 A.D. 2d 556, 345 N.Y.S. 2d. 58 (1973).

Sloan moved before Judge Bonsal for summary judgement against Edwards & Hanly (A261-329) and presented all the facts and evidence necessary for the granting of this motion more than sven months before the trial commenced in the

State Supreme Court before Judge Shanley Egeth. Edwards & Hanly voluntarily chose to press forward with its state court suit while being well aware that Judge Bonsals decision was on appeal. When it lost in the State Supreme Court, Edwards & Hanly proceded expeditiously to the appellate Division, First Department where it won a reversal. Now Edwards & Hanly claims that there have been substantial proceedings in the state courts what must not be disturbed ignoring the fact that these substantal proceedings were initiated entirely by Edwards & Hanly long after Sloan moved in federal court for summary judgement and for a stay of the state court proceedings. It is submitted that this argument cannot be permitted to succeed. Incidentaly, Edwards & Hanly has been unable to obtain execution on its judgment because it commenced its action not [illegible] service of a summons and complaint but by attaching the 1,000 shares of CJV belonging to Sloan which Edwards & Hanly had in its posession. Ever since the appellate Division made its decision, trading in these shares has been suspended. As a result, Edwards & Hanly cannot sell these shares and if this court decides to stay further proceedings the status quo will be preserved.

CONCLUSION

The devision, order and judgment of the district court should be reversed.

Dated: Reykjavík Iceland
January 21, 1976

Respectfully submitted,

Samuel H. Sloan

Samuel H. Sloan,
Kleppsvegi 26
3. HÆD T.H.
Reykjavík, Iceland.
Telephone no. 35332

SLOAN Sloan v. Can. Jav. 75-7096

STATE OF NEW YORK)
: SS.
COUNTY OF NEW YORK)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 28 day of Jan. 1976 deponent served the within Brief upon:

DIAMOND & GOLOMB, 99 Park Avenue, NYC;
LORD, DAY & LORD, 25 Broadway, NYC
SULLIVAN & CROMWELL, 48 Wall St., NYC
BREED, ABBOTT & MORGAN, One Chase Manhattan Plaza, NYC
CRAVATH, SWAINE & MOORE, One Chase Manhattan Plaza, NYC
STROOCK & STROOCK & LAVAN, 61 Broadway, NYC
SATTERLEE & STEPHENS, 277 Park Avenue, NYC
DELSON & GORDON, 230 Park Avenue, NYC
~~attorney(s) for~~
BUTOWSKY, SCHNENKE & DEVINE, 230 Park Avenue, NYC
OLITT, FRIEDBERG & KAGEL, 200 Park Avenue, NYC
PATTERSON, BELKNAPP & WEBB, 30 Rockefeller Plaza, NYC
LUNNEY & CROCCO, 20 Exchange Place, NYC
ABRAHAM L. BIENSTOCK, 20 Broad St., NYC
MALCOLM HOFFMAN, 14 E. 41st St. NYC
SILBERFELD, DANZIGER & BANGER, 230 Park Avenu., NYC
LEONARD TOBOROFF, 745 Fifth Ave., NYC
and
PAUL SCOTT, 600 Madison Avenue, NYC

the address(es) designated by said attorney(s) for that purpose by depositing 2 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

Robert Bailey

Sworn to before me, this 28 day of Jan. 1976.

William Bailey

WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1976